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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/707,184	11/06/2000	Venky Narayanaswamy	869.005US1(5302)	8123

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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

8

DATE MAILED: 05/29/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/707,184

Applicant(s)
Narayanaswamy et al

Examiner
Lien Tran

Art Unit
1761



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Mar 13, 2002
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-15, 26-28, and 30-35 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-15, 26-28, and 30-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 7 6) ☐ Other: _____

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1. Applicant's election with traverse of Group I, claims 1-15 and 27-30 in Paper No. 6 is acknowledged. The traversal is on the ground(s) that the cellular structure formed in the dough of the method claims 16-26 is a key element of the structure claimed in claims 1-15 and 27-30. This is not found persuasive because while the cellular structure may be a common element; the product as claimed can be made by another process such as the one set forth in the restriction requirement in the previous office action. The product does not requires the particular steps of the process. Applicant has not presented argument to show that the two inventions are not patentably distinct.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 1,3-5,8,14-17, 27-28,31 are rejected under 35 U.S.C. 102(a) as being anticipated by Le Flecher et al (EPO 868850A1) for the same reason set forth in paragraph 8 of the previous office action and for the additional reason set forth below.

The way in which the dough is made as claimed in claim 31 does not determine the patentability of the product. Determination of patentability in “ product-by-process” claim is based on the product itself (see In re Thorpe 227 USPQ 964). As to the limitation “ an elastic gluten based” dough, this does not define over the prior art because Le Flecher et al disclose a dough and the dough is made of flour which contains gluten. Thus, the LeFlecher et al dough is an elastic gluten based dough. The claimed dough do not contain additional gluten material beside the gluten present in the flour.

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3. Claims 2,6,7,9,11-13,30 and 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Le Flecher et al for the same reason set forth in paragraph 11 of the previous office action.

4. The obviousness double patenting rejection of claims 1-15,27-28 and 30-35 is maintained for the same reason set forth in paragraph 14 of the previous office action.

5. In the response filed March 13, 2002, applicant argues Le Flecher et al do not anticipate the claims because they do not disclose a dough having a cellular network and an elastic gluten based dough. This argument is not persuasive. Le Flecher et al disclose a dough and the dough is made of flour which contains gluten. Thus, the LeFlecher et al dough is an elastic gluten based dough. The claimed dough do not contain additional gluten material beside the gluten present in the flour. As to the cellular network, the cellular network in the claimed dough is obtained by injecting the inert gas into the dough and thus expanding the dough. Le flecher et al disclose the same processing step; thus, it is inherent the dough has a cellular network. Applicant argues Le Flecher et al's goal is to create a cake dough which is sufficiently liquid to be pourable and which can contain a high amount of liquid whole eggs. While Le flecher et al disclose the dough is sufficiently liquid to be pourable, they still disclose that the product is a dough and is not a batter. The egg content is in the range of 15-30%; this is the liquid content of the dough. The specification discloses on page 8 that the moisture content of the claimed dough is in the range of 10-20%. The moisture content of the Le Flecher et al dough is within the range disclosed.

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Applicant makes the same argument with respect to the 103 rejection; the argument is not persuasive for the same reason set forth above.

With respect to the double patenting rejection, applicant argues the instant application claims a leavened dough article and this structure is patentably distinct from the unleavened article in application no. 09/707676. This argument is not persuasive because the addition of leavening agent is optional as claim 1 recites " a ready-to-use dough article, wherein the dough is substantially free of an active leavening agent. Thus, the claimed dough can be an unleavened article.

6. Applicant's arguments filed March 13, 2002 have been fully considered but they are not persuasive. .

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

May 24, 2002


LIEN TRAN
PRIMARY EXAMINER
